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2 BEFORE THE SHORELINES HEARINGS BOARD
3 STATE OF WASHINGTON

4 HARALD D. HURLLEN,)

5 Appellant,)

SHB No. 90-22

6 v.)

7 CHELAN COUNTY, TED KINMAN, and)
8 STATE OF WASHINGTON DEPARTMENT)
9 OF ECOLOGY,)

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

10 Respondent.)
11 _____)

12 The Shorelines Hearings Board held a hearing at Chelan,
13 Washington, Thursday and Friday, October 4 and 5, 1990, on Harald L.
14 Hurlen's appeal, contesting Chelan County's approval of a shoreline
15 variance to permit construction of a single family residence 30 feet
16 from the south shore of Lake Chelan.

17 Present for the Board were: Members Harold S. Zimmerman,
18 presiding; Annette McGee, Nancy Burnett, Richard Gidley, and William
19 E. Derry. Appellant Hurlen was represented by Karien L. Balluff,
20 attorney at law. Respondents Ted Kinman, Chelan County and Washington
21 State Department of Ecology were represented by Carol A. Wardell for
22 Kinman; Susan Hinkle for Chelan County; and Kerry O'Hara for the
23 Department of Ecology.

24 Court reporters Theresa A. Hewitt and Kay Stevens of Steichen &
25 Hewitt, registered professional reporters, recorded the proceedings.

26 Witnesses were sworn and testified. Stipulated exhibits A-A to

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
SHB No. 90-22

1 A-0, and R-A to R-S were admitted and examined. From the testimony
2 heard and exhibits examined, the Board makes these

3 FINDINGS OF FACT

4 I

5 Ted and Claudia Kinman have owned real property near Twenty-Five
6 Mile Creek on the south side of Lake Chelan since 1966. It is legally
7 described as Lot 13 of Robison's Plat of Holiday Point in Section 24,
8 Township 29 North, Range 20 East W.M.

9 II

10 In 1984, the Kinmans applied for and obtained a permit to install
11 a septic system for a trailer. The Chelan-Douglas Health District
12 indicated that the septic system as proposed was sufficient for the
13 trailer, but would be unacceptable to serve a proposed home on the
14 property.

15 III

16 In the 1980s, Harald and Lee Hurlen purchased property on Lot 12,
17 adjacent to and downlake of the Kinmans' lot. In 1983-84, the Hurlens
18 built a one-story structure facing uplake, at a lower elevation than
19 the Kinmans' property.

20 IV

21 In 1984, the Kinmans built a dock with stairs up the steep bank,
22 excavated a building site on the waterward portion of the lot,
23 installed a partial septic system, laid underground wiring to the
24

1 building site, installed a water system, installed underground
2 telephone lines, and built a pumphouse.

3 V

4 The dock permit issued in 1984 indicated that buildings required
5 a 20-foot setback from the ordinary high water mark.

6 VI

7 In late 1989, the Kinmans applied for a variance from the
8 applicable setback in order to build a single-family dwelling on top
9 of the 1984 excavation, asking that they be allowed to build within 30
10 feet of the ordinary high water mark. Chelan County's applicable
11 setback by the common line method was determined to be 79 feet. On
12 March 12, 1990, a hearing was held on the requested variance for the
13 Kinman property.

14 VII

15 County Health regulations require that a septic system for a home
16 cannot be located under a driveway, and cannot be located within 100
17 feet of the ordinary high water mark. The tank itself must be 50 feet
18 from any surface water, and drainfields must be a least 10 feet from
19 the foundation of a structure. Drainfields are to be on fairly level
20 ground. These requirements, plus the fact there is a large, unmovable
21 rock on the property mean that the septic system will have to utilize
22 property landward of the home site. The house would thus be
23 constructed on the waterward portion of the lot.

VIII

The Chelan County Board of Adjustment had a full discussion of the County Shoreline Master Program, and approved issuance of the variance permit. Mr. and Mrs. Hurlen did not attend the March 12, 1990 hearing. On March 13, 1990, a permit was granted allowing the construction of a single family residence within 30 feet of the ordinary high water mark.

IX

The Department of Ecology approved the variance by letter dated April 20, 1990. On April 19, 1990, Mr. Hurlen filed a request for appeal of the variance approval. The appeal was certified May 11, 1990, by the Attorney General, representing the Department of Ecology.

X

Chelan County officials measured the ordinary high water mark and located the 30-foot setback line on the property, and marked it with stakes and pink tape. While the irregular shoreline, and the steep bank make such marking difficult, the Board finds that the public works department lines were accurate.

XII

Location of the house was marked in green by the proposed builder, Bradley A. Kronschnabel. The house would have a daylight, lower level, a main floor with a deck, and an upper level, with an estimated 2,500 square feet on all three levels. It would comply with

1 Chelan County height and bulk regulations.

2 XIII

3 The deck would be held up by posts, and its railing would be a
4 see-through type construction. The house and deck would have some
5 visual impact of the Hurlens' view to the north. The Kinmans'
6 property has limiting factors: a huge rock in the middle of the lot,
7 which could not be removed except by major blasting; a steep and rocky
8 lower area; and a restricted area for placement of an adequate
9 drainfield for a septic tank.

10 XIV

11 Any Conclusion of Law deemed to be a Finding of Fact is hereby
12 adopted as such. From these Findings of Fact, the Board makes these

13 CONCLUSIONS OF LAW

14 I

15 The Shorelines Hearings Board has jurisdiction in the instant
16 case. RCW 90.58.180. The appellant has the burden of proof. RCW
17 90.58.140(7).

18 II

19 Scope of review is established in the Washington Administrative
20 Code as follows:

21 *Hearings upon request for review shall be*
22 *quasi-judicial in nature and shall be conducted de novo*
23 *unless otherwise required by law. WAC 461-08-174.*

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III

Appellant has the burden to prove that the applicant Kinmans have not met the variance criteria of the Chelan County Shoreline Master Program, Section 29.2.2. The criteria are:

- a. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes a reasonable permitted use of the property.
- b. That the hardship is specifically related to the property and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program and not for example from deed restrictions or the applicant's own actions.
- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.
- d. That the requested variance will not constitute a grant of special privilege not enjoyed by other properties in the area, and will be the minimum necessary to afford relief.
- e. That the public interest will suffer no substantial detrimental effect.
- f. That the public rights of navigation and use of the shorelines will not be adversely affected.

WAC 173-15-150 is to the same effect.

IV

The Board concludes that the Kinmans have met the criteria for a variance, as set out both in the Chelan County Shoreline Master Program and Department of Ecology in WAC 173-15-150.

1 Under (a) of the SMP:

2 That the strict application of the bulk, dimensional
3 or performance standards set forth in the applicable
4 master program precludes a reasonable permitted use of
the property.

5 The Board concludes that the common line setback of 79 feet would
6 preclude a reasonable permitted use of the property, in that it would
7 not allow construction of a home with opportunity for views comparable
8 to those of nearby residences, nor similar access to the shoreline.
9 Other homes in the area are built closer, and have far greater views
10 than would be allowed, if the common line were required.

11 V

12 Under (b) of the SMP:

13 That the hardship is specifically related to the
14 property and is the result of unique conditions such as
15 irregular lot shape, size, or natural features and the
application of the master program and not for example
16 from deed restrictions or the applicant's own actions.

17 The Board concludes that the hardship related to the Kinman
18 property is the result of a unique condition: it has a large, natural
19 rock in such a location that the home could not be built there without
20 dangerous blasting, that would still allow distance and space for the
21 septic system required by Chelan County. The Board further concludes
22 that the slope of the property, the irregularity of the shoreline, the
23 steep vertical line of the shoreline, and the configuration of the
24 property, create hardships that make application of the setback
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1 requirements unreasonable.

2 VI

3 Under (c) of the SMP:

4 *That the design of the project will be compatible with*
5 *other permitted activities in the area and will not*
6 *cause adverse effects to adjacent properties or the*
shoreline environment designation.

7 The Board concludes that the Kinman house would be compatible
8 with other homes in the area, would be similar to several, and would
9 not cause significant adverse effects to adjacent properties or the
10 shoreline environment. While the Board recognizes that any residence
11 built next door to the Hurlens will have an impact or effect, it
12 concludes that it would be neither substantial nor significantly
13 adverse.

14 VII

15 Under (d) of the SMP:

16 *That the requested variance will not constitute a grant*
17 *of special privilege not enjoyed by the other properties*
18 *in the area, and will be the minimum necessary to afford*
relief.

19 The Board concludes that homeowners on Lake Chelan have been
20 permitted to build as close or closer to the lake than would the
21 Kinmans under the variance. Homeowners within the immediate area
22 enjoy views equal and better than the Kinmans would in their proposed
23 structure. The Board therefore concludes that the variance will not
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1 grant a special privilege and will be the minimum necessary to afford
2 relief.

3 VIII

4 Under (e) of the SMP:

5 *That the public interest will suffer no substantial*
6 *detrimental effect.*

7 The Board finally concludes that the granting of the variance
8 will not impact the public interest in such a manner as to cause
9 substantial detrimental effect, nor will public rights of navigation
10 and the use of the shorelines be adversely affected. The Board
11 further finds that extraordinary circumstances have been shown
12 justifying approval of the variance.

13 IX

14 Any Finding of Fact deemed to be a Conclusion of Law is hereby
15 adopted as such. From these Conclusions of Law, the Board enters this
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ORDER

The decision of the Chelan County Board of Adjustment and the Washington State Department of Ecology to grant the shoreline variance to permit construction of the Kinman residence is AFFIRMED.

DONE this 31st day of October, 1990.

SHORELINES HEARINGS BOARD

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Presiding

Annette S. McGee
ANNETTE S. MCGEE, Member

Nancy Burnett
NANCY BURNETT, Member

Richard Gidley
RICHARD GIDLEY, Member

William E. Derry
WILLIAM E. DERRY, Member

INFORMATION ON EXHIBITS

1 Please notify Ms. Robyn Bryant of this office by
Feb. 1, 1991 if you will be arranging to have your oversized
exhibits retrieved.

If you do not notify us, absent an appeal, the exhibits will be
discarded. If the matter is appealed, the exhibits are sent to
Superior Court.